

FILED

NOV 22 2017

TED J. PHILAYAW, ACTING CLERK  
U.S. District Court  
Southern District of West Virginia

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

Andrew Miller,  
Petitioner,

VS

Civil Action No. 2:17-4358  
42 U.S.C. § 1983

James Stocky,  
Respondent.

### COMPLAINT

#### JURISDICTION:

State courts have jurisdiction to hear claims based on Federal Civil rights statutes and must apply federal law in doing so. Every state has expressly or by implication opened its court to § 1983 actions. Howlett v. Rose, 496 U.S. 356, 110 L. Ed 2d 332, 1105 S. Ct. 2430 (1990) State immunity rules and notice requirements do not apply in state Court § 1983 action. Felder v. Casey, 487 U.S. 131, 101 L. Ed 2d 123, 108 S.Ct. 2302 (1988) 42 U.S.C. § 1983

#### I. Previous Lawsuits:

- A. Have you began other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes \_\_\_\_\_ No \_\_\_\_\_

- B. If your answer to A is yes, describe each lawsuit in the space provided. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs:

Andrew Miller

\_\_\_\_\_  
\_\_\_\_\_

Defendants:

David Ballard

\_\_\_\_\_  
\_\_\_\_\_

2. Court (if federal court, name the district; if state court, name the county):

Southern District West Virginia  
Charleston Division

3. Docket Number: Zi14-CV-16868

4. Name of the judge to whom case was assigned:

Augustine L. Tinsley

5. Disposition (for example: Was the case dismissed? Was it appealed?)

Is it still pending?)

Pending!

6. Approximate date of filing lawsuit: 10/1/14

7. Approximate date of disposition: \_\_\_\_\_

II. Place of present confinement: Mt. Olive Corrections  
Complex

A. Is there a prisoner grievance procedure in this institution?

Yes  No

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes  No

C. If your answer is YES:

1. What steps did you take? \_\_\_\_\_  
\_\_\_\_\_

2. What was the result? \_\_\_\_\_

D. If your answer is NO, explain why not: This is about  
Violation of my Criminal Conviction.

III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Andrew Wayne Miller  
(Full Name)  
1st St. Side Way Rd. Oliver, Wyo 85185  
(Present Address)

B. Additional Plaintiffs and address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant JAMES C STOCKER  
is employed as Judge in Kanawha County  
at the Circuit Court!

D. Defendant Donald Morris  
is employed as Prosecutor  
at 301 Virginia St East  
Charleston, WV 25301

E. Defendant Mark Plants  
is employed as Prosecutor  
at 301 Virginia St East  
Charleston, WV 25301

F. Defendant Troy N. Giatras  
is employed as Lawyer  
at Giatras Law Firm

G. Defendant \_\_\_\_\_  
is employed as \_\_\_\_\_  
at \_\_\_\_\_

H. Defendant \_\_\_\_\_  
is employed as \_\_\_\_\_  
at \_\_\_\_\_

I. Any additional defendants \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the name of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary).

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: James C. Stockey

is employed as: Judge Kanawha County

at Circuit Court

D. Additional defendants: Troy Gootras (Attorney) et al

Gootras Law Firm, Mark Plants & Donald  
Morris Prosecuting Attorney, &

#### IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

On April 15<sup>th</sup> 2010 the Plaintiff filed guilty to attempt to murder - 3 to 15 yrs - to run concurrent with the Raleigh County Case no. 09-f-733-H counts 1, 2, 3 & 4.  
(Ex. 1) This is Contract law! Plants, Morris & Gootras agreed to fulfill the terms of this plea agreement. (Ex. 2) On the April 15, 2010 plea agreement #4 it states "it is further understood that should any party to this agreement fail to meet the terms & conditions of this agreement then this Agreement should terminate as null & void." (Ex. 2) The Plaintiff

**IV. Statement of Claim (continued):**

Never plead guilty to Count 4<sup>4</sup> in Raleigh County case no 09-6-233 (ex.3) the judge James Stockley is suppose to uphold this Plea Agreement! between defendant's Morris, Platts, & Girotto (ex.1) this judge is suppose to set aside this conviction upon an offender parole motion. Plaintiff is offended for the terms of the Agreement is not fulfilled in full! Defendant Stockley still has not overturned this conviction after plaintiff filed his motion on or about Sept. 30, 17!

None of the Defendants has fulfilled their part of the plea agreement & sentence petitioner to the penitentiary this violates Plaintiff 14<sup>th</sup> amendment due process.

State briefly exactly what you want the court to do for you. Make no legal arguments.  
Cite no cases or statutes.

Order the Defendants to pay 1,000,000 in cash jointly & severally. Order the defendant to do their job as to the Plea Agreement/Contract law & overturn the conviction, & cover all expenses in this case & whatever this Court deems proper.

---

---

---

V. Relief

State briefly exactly what you want the court to do for you.  
Make no legal arguments. Cite no cases or statutes.

1,000,000<sup>4</sup> in costs!  
+ \$11 thousand to  
do the right  
thing.

VI. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name: \_\_\_\_\_
- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes \_\_\_\_\_

No       

If so, state the name(s) and address of each lawyer contacted.

\_\_\_\_\_  
\_\_\_\_\_

If not, state your reasons:  
\_\_\_\_\_  
\_\_\_\_\_

C. Have you previously had a lawyer representing you in a civil action in this court?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, state the lawyer's name and address:

---

---

---

---

Signed this 1 day of NOV, 2017

  
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1 day of NOVEMBER, 2017.

  
(Signature of Plaintiff)

**STATE OF WEST VIRGINIA**  
**COUNTY OF** \_\_\_\_\_,

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

STATE OF WEST VIRGINIA

COUNTY OF \_\_\_\_\_, TO-WIT:

**VERIFICATION**

*[Signature]*, the Petitioner in the foregoing 42 U.S.C. § 1983 Complaint, after being duly sworn, says that the facts and allegations contained therein are true, except insofar as they are stated to be upon information and belief, and that insofar as they are therein stated, they are believed to be true.

*[Signature]* \_\_\_\_\_  
Petitioner

Subscribed and sworn before me this 30<sup>th</sup> day of October, 2017.  
My commission expires Sept 10, 2020.

*Brenda K. Blake*  
Notary Public

